

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5217 of 2015

=====

1. Smt. Pammi Devi daughter of Late Baliram Pandey, resident of Village Mahuawa, Police Station Shikarpur, District West Champaran.

.... Petitioner/s

Versus

1. Murlidhar Pandey,
2. Sridhar Pandey, Both minor sons of Rajesh alias Ranjan Pandey under the guardianship of their father namely Rajesh alias Ranjan Pandey, resident of Village Shikarpur Tola Khor, Police Station Shikarpur, District West Champaran.
3. Mostt. Kumod Devi widow of Late Baliram Pandey, resident of Village Shikarpur Tola Khor, Police Station Shikarpur, District West Champaran.
4. Smt. Rani Devi wife of Rajesh alias Ranjan Pandey, daughter of Late Baliram Pandey, resident of Village Jaitia, Police Station Chanpatia, District West Champaran at present resident of Village Shikarpur Tola Khor, Police Station Shikarpur, District West Champaran.
5. Smt. Guller alias Shammi Devi Wife of Ripusudan Debey, daughter of Late Baliram Pandey, resident of Village Harsari, Police Station Shikarpur, District West Champaran.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Khatim Reza

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 29-01-2016

Heard learned counsel for the petitioner.

At the time of hearing of the interlocutory application being I.A. No. 486 of 2016, the learned counsel, Mr. Khatima Reza, appearing on behalf of the petitioner submitted that the this writ application itself may be heard on merit on admission matter. Accordingly, I heard him on merit in admission matter.

By the impugned order dated 27.02.2015, the learned court below refused to convert the Probate case No. 05 of 2010 to

a regular title suit.



It appears that a probate case was filed by the respondent. The present petitioner filed written statement alleging that the Will in question, for which, the probate case has been filed is forged, fabricated and antedated. It further appears that in the said objection, the petitioner raised a ground that the executant had no title to execute the Will and also that the property was not allotted in the share of Baliram Pandey on the various other objections. Thereafter, application was filed by the present petitioner praying for converting the probate case to a regular title suit and the court below, by the impugned order, rejected the said application relying on various decision of the High Court, wherein it has been held that in a probate case, title cannot be decided and, therefore, probate case cannot be converted to a regular title suit.

The learned counsel for the petitioner, relying on Section 295 of the Indian Succession Act, submitted that when contesting written statement is filed, the court should convert the probate case to a regular title suit.

Section 295 of the Indian Succession Act provides that in any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of

Civil Procedure. Now, since the petitioner has filed contesting written statement, the procedure of a suit will be followed and the probate case cannot be converted to a regular title suit and after conversion, the application of title cannot be decided.

In view of the above fact, the impugned order passed by the court below needs no interference in supervisory jurisdiction under Article 227 of the Constitution of India. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

brajesh/-

U			
---	--	--	--